

(2011) 12 AHC CK 0318

Allahabad High Court

Case No: Civil. Miscellaneous Writ Petition No. 45202 of 2002

Ajay Shanker Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Dec. 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2012) 1 ADJ 180 : (2012) 135 FLR 945

Hon'ble Judges: Ramesh Sinha, J; Rakesh Tiwari, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Hon"ble Ramesh Sinha, J.

Heard Shri Sunil Kumar Tiwari, Advocate holding brief of Shri Prakash Padia, learned counsel for the petitioner, the learned Standing Counsel for respondent Nos. 1, 2 and 4 and Shri B.N. Singh, learned counsel for respondent No. 3. Counter and rejoinder affidavits have been exchanged between the parties.

2. By means of this writ petition, the petitioner has prayed for quashing of the impugned order dated 26.8.2002 passed by respondent No. 1, Secretary, Public Works Department, Anubhag -VI, U.P., Lucknow, whereby a penalty of Censure Entry and a recovery of 75% of Rs. 13,000/- i.e. Rs. 9750/- as financial loss to the State Government has been caused by the petitioner.

3. The brief facts giving rise to the present writ petition are that the petitioner, who is working as Assistant Engineer in Provincial Division, Public Works Department, Kaushambi, was posted at Sultanpur on 3.2.1990. During his tenure from 1.4.1991 to 30.6.1994, as Assistant Engineer in Sultanpur he was entrusted for construction of a boundary wall under the Technical Education Project of the World Bank in Government Women Polytechnic, Amethi, District Sultanpur. A part of the wall collapsed having not been constructed according to specification.

4. On spot inspection carved out on 30.6.1996 by the authorities concerned, it was found that by his act the petitioner had caused a loss of Rs. 13,000/- to the State Government.
5. The petitioner was then suspended from service with immediate effect by order dated 10th February, 1997. However, an application made by the petitioner dated 24.2.1997, the suspension of the petitioner was revoked by order dated 5.6.1997. A Charge-sheet was served upon the petitioner on 21.8.1997 is being quoted below for ready reference :
6. The petitioner submitted his reply to the charges on 30.12.1997, inter alia, that the Principal of Government Women Polytechnic, Amethi, District Sultanpur by means of his letter dated 15.5.1993 requesting the petitioner either to raise the boundary wall by 4 feet or the iron /bar wire fence over it. The petitioner examined himself on 15.6.1998 in the enquiry in support of his case and was cross-examined.
7. By the impugned order dated 28.8.2002 the petitioner was awarded Censure Entry and recovery of 75% Rs. 13,000/- i.e. Rs. 9750/-.
8. The counsel for the petitioner has argued that the part of the boundary wall of Government Women Polytechnic which had fallen down was due to natural calamity and the petitioner was not at fault. It is stated the loss which the State Government had suffered was because of an act of the God for which, the petitioner could not be held responsible, therefore, the impugned order dated 26.8.2002 passed by the respondent No. 1 being illegal and arbitrary is liable to be quashed.
9. On the other hand, the learned Standing Counsel has argued that the petitioner being Assistant Engineer in the Public Works Department in District Sultanpur as he then was, has not constructed the boundary wall in accordance the Prescribed drawing and specifications. It is argued that Technical Engineer in the inspection had found variance in thickness and height of the wall. It was found that the thickness of the wall was 11.5 cm. in place of 23 cm. and its height was 3.5 meter in place of 2.1 meter. The petitioner in the enquiry proceedings on 15.6.1998 has admitted that he had put in only two years of service in the department as such he did not have much experience of construction. The relevant extract of admission of the petitioner with enquiry is quoted below :
10. According to the counsel for the petitioner, it is proved from above that the petitioner had not made construction as per the drawing and the specification and was taking shelter alleging inexperience and ignorance of construction work.
11. No other point has been argued by the parties.
12. After having considered the submissions advanced by the learned counsel for the parties, we are of the opinion that the petitioner being a qualified Assistant

Engineer ought to have knowledge about the construction work which is his job requirement. The alleged inexperience in the job cannot come to his rescue as he admitted that he had two years experience of the construction work in the department. He only had to over-see construction of a single straight wall of required thickness and height according to specifications as per the drawing and specifications. He could not have made any alteration in the thickness and height of the wall without having technical consultation and approval of his superiors, merely on the request of the Principal. The petitioner also failed in his duty by not informing his superiors about the request of the Principal of the College and proceeded with constructions on his own. It may be noted that increasing the height of the wall and putting barbed wire on it required further budgetary provisions than were sanctioned by the Government. Yet the petitioner on his own reduced the thickness of the wall and increased its height by which the structure standards changed making the structure unstable, causing loss to the Government. Respondent No. 1 has already taken a liberal view against the petitioner and has only been awarded minor punishment of Censure Entry and Recovery of Rs. 9750/- which is amount of 75% of Rs. 13,000/- being loss caused to Government by him due to his negligence act. In our considered opinion, the impugned order does not suffer from any illegality or infirmity hence, no interference called for by this Court in its exercise of extra ordinary power under Article 226 of the Constitution of India.

13. The writ petition is, accordingly dismissed and the interim order stands vacated. No order as to costs.